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7

8 **IN THE UNITED STATES BANKRUPTCY COURT**
9 **DISTRICT OF NEVADA**

10 In re:
11 CROFTS & MILLER, INC., DBA THE ICE
12 HOUSE LOUNGE,
13 Debtor.

14 Case No. BK-S-09-11393-BAM
Chapter 7

15 **ERRATA TO MOTION TO SELL
DEBTOR'S ASSETS WITH
CERTIFICATE OF SERVICE**

16 Date of Hearing: August 10, 2010
Time of Hearing: 2:30 PM

17 James, F. Lisowski, Sr., the Chapter 7 Trustee ("Trustee") for the Estate of Crofts & Miller,
18 Inc. d/b/a the Ice House Lounge ("Debtor") submits this Errata to Motion to Sell Debtor's Assets
19 ("Motion"). [Dkt. 19]. Counsel to the Trustee inadvertently named Ice House Lounge, LLC ("IHL")
20 as the purchaser of the Liquor License described in the Motion instead of Ms. Bang Ja Kim who will
21 be the ultimate purchaser of the Liquor License. Attached is a redline version of the Motion
22 incorporating this corrected information. (Exhibit A).

23 DATED this 14th day of July, 2010.

24 
ANTHONY A. ZMAILA LIMITED PLLC

25
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CERTIFICATE OF SERVICE

I certify that I am an employee of Anthony A. Zmaila Limited PLLC, and that on the 14th day of July, 2010, I caused to be served a true and correct copy of **ERRATA TO MOTION TO SELL DEBTOR'S ASSETS** in the following manner:

(ELECTRONIC SERVICE) Under Administrative Order 02-1 (Rev. 8-31-04) of the United States Bankruptcy Court for the District of Nevada, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by that Court's facilities.

(UNITED STATES MAIL) By depositing a copy of the above-referenced document for mailing in the United States Mail, first class postage prepaid, at Las Vegas, Nevada, to the parties listed on the attached service list, at their last known mailing addresses, on the date above written.

(OVERNIGHT COURIER) By depositing a true and correct copy of the above-referenced document for overnight delivery via Federal Express, at a collection facility maintained for such purpose, addressed to the parties on the attached service list, at their last known delivery address, on the date above written.

(FACSIMILE) That I served a true and correct copy of the above-referenced document via facsimile, to the facsimile numbers indicated, to those persons listed on the attached service list, on the date above written.

An employee of
Anthony A. Zmaila Limited PLLC

EXHIBIT A

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Attorneys for James F. Lisowski, Sr.

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

Case No. BK-S-09-11393-BAM
Chapter 7

CROFTS & MILLER, INC., dba THE ICE
HOUSE LOUNGE,

Debtor.

MOTION TO SELL DEBTOR'S ASSETS

Date of Hearing: August 10, 2010
Time of Hearing: 2:30 p.m.

James, F. Lisowski, Sr., the Chapter 7 Trustee (“Trustee”) for the Estate of Crofts & Miller, Inc. d/b/a the Ice House Lounge (“Debtor”) submits this Motion to Sell Debtor’s Assets (“Motion”) pursuant to 11 U.S.C § 363(b) and 363(f), and Rules 6004 of the Federal Rules of Bankruptcy Procedure.

This Motion is made and based upon 11 U.S.C. §§ 105 and 363, Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure, and the following memorandum of points and authorities, and any argument of counsel to be presented at the hearing of this Motion.

MEMORANDUM OF POINTS AND AUTHORITIES

A. JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334(a).
 2. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N), and (O) and is a proceeding arising in the bankruptcy case.

3. Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and

B. STATUTORY AUTHORITY

The statutory predicates for the relief sought are 11 U.S.C. §§ 105, 363(b), 363(f), and 363(m). The related rules are Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure.

C. STATEMENT OF THE FACTS

7 1. On February 2, 2009, the Debtor filed a voluntary petition for relief under chapter 7
8 of the Bankruptcy Code in this District. [Dkt. 1.]

9 2. The Trustee is duly appointed as the Chapter 7 Trustee in the Debtor's bankruptcy
10 case and has acted in that capacity ever since his appointment. [Dkt. 2.]

11 3. On December 31, 2009, the Trustee received an offer from Ice House Lounge, LLC
12 (“IHL”), who had been in negotiations to purchase the land upon which the Debtor conducted
13 business, to purchase the personal property of the Debtor, which includes furniture, fixtures and
14 equipment, and a liquor license (LT16-00093) (“Liquor License”).

15 4. IHL, unfortunately, did not end up acquiring the real property, and subsequently Ms.
16 Bang Ja Kim ("Kim") offered to purchase only the Liquor License for \$15,000, and would bring
17 current any outstanding fees owed to the City of Las Vegas after this Court's approval of this sale.

18 5. The Trustee accepted ~~HHL~~'s Kim's offer and required that ~~HHL~~ Kim deposit \$5,000 on
19 the day that this Motion is filed with the balance due five (5) days after approval of this Motion by
20 the Court.

D. BUSINESS AND ASSETS OF DEBTOR

- 22 1. Debtor is a Nevada limited liability company which operated a restaurant and bar.
23 2. Debtor maintained, leased, and owned restaurant furniture and equipment.
24 3. Debtor obtained and maintained a Liquor License.

E. SALE OF ASSETS

26 The Trustee desires to sell the Liquor License to ~~HHL~~Kim.

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2 **II. LEGAL ARGUMENT**3 **A. THE LEGAL STANDARD FOR APPROVAL TO SELL ASSETS OF THE ESTATE**

4 The Trustee may sell the property of the Debtor. The trustee's application of his sound
 5 business judgment in the use, sale or lease of property is subject to great judicial deference.
 6 See, e.g., *In re Moore*, 110 B.R. 924 (Bankr. C.D. Cal. 1990); *In re Canyon P'ship*, 55 B.R. 520
 7 (Bankr. S.D. Cal. 1985).

8 In determining whether any sale of assets outside the ordinary course of business
 9 should be approved, bankruptcy courts generally consider the following factors:

- 10 1. Whether a sufficient business reason exists for the sale;
- 11 2. Whether the proposed sale is in the best interest of the
 estate, such that the proposed sale terms should have been properly
 negotiated and proposed in good faith and the purchaser should
 have been involved in an "arms-length" transaction with the seller;
 and
- 14 3. Whether notice of the sale was sufficient.

15 See *In re Walter*, 83 B.R. 14, 19-20 (B.A.P. 9th Cir. 1988) (citing *In re Lionel Corp.*, 722 F.2d 1063
 16 (2d Cir. 1983).

17 **1. Whether a Sufficient Business Reason Exists for the Sale**

18 The estate does not have many assets to liquidate and the business of the Debtor is no longer
 19 in operation. The furniture, fixtures, equipment and Liquor License represent almost all of Debtor's
 20 assets. Selling the Liquor License to IHL Kim, who has been instrumental in maintaining the
 21 license's active status and the zoning on the real property, is highly desirable and will bring much
 22 needed liquidity into the estate.

23 **2. Whether the Proposed Sale is in the Best Interest of the Estate;
 24 Proposed Sale Terms are Proper and Made in Good Faith**

25 The Debtor's business activities have been dormant since filing for bankruptcy. The property
 26 is not currently in use and is depreciating with every day that passes. IHL Kim has been interested
 27 in acquiring the business assets of the Debtor since September 2009. IHL Kim took steps to help the
 28 Trustee keep the Liquor License of the business of the Debtor active earlier this year. IHL Kim is a

1 ready, willing, and able buyer, and the Estate will benefit more from this sale than it would if the
 2 estate had to look for other buyers.

3 IHL-Kim is to purchase the Liquor License (LT16-00093) for \$15,000. IHL-Kim will
 4 deposit \$5,000 on the day that this Motion is filed with the balance due five (5) days after approval
 5 of this Motion by the Court. Trustee will sell the liquor license via Trustee Bill of Sale, free and
 6 clear of all liens. IHL-Kim will also bring current all outstanding fees due on the Liquor License.
 7 These terms were made in good faith and would benefit the estate because the sale would bring
 8 liquidity in and would not cause the need for the estate to pay any fees to the City of Las Vegas in
 9 this sale.

10 **3. Sufficient Notice**

11 The Trustee gave notice with this Motion pursuant to Rule 2002(a)(2) of the Federal Rules of
 12 Bankruptcy Procedure.

13 **III. CONCLUSION**

14 Based on the foregoing, the Trustee requests that this Court grant this Motion and allow the
 15 Trustee to sell to IHL-Kim the Liquor License free and clear of all liens.

16 DATED this _____ day of July, 2010.

17 **ANTHONY A. ZMAILA LIMITED PLLC**

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